



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CARR
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January 10, 1964

Honorable Thos. Bartlett, Jr.
County Attorney
Falls County
Marlin, Texas

Opinion No. C- 203

RE: Whether Acts 1961, 57th Leg.,
Ch. 487, exempting personal
property of charitable
institutions from ad valorem
taxes is constitutional

Dear Mr. Bartlett:

In your letter of December 9, 1963, you have requested an opinion from this department as to whether or not that part of Section 7 of Article 7150, Vernon's Civil Statutes, as amended by Acts 1961, 57th Legislature, Chapter 487, exempting certain personal property is constitutional. This amendment reads as follows:

"All buildings and personal property belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this article is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when the funds, property and assets of such institutions are placed and bound by its law to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons."

Article 8, Section 2 of the Texas Constitution provides in part as follows:

" . . . the Legislature may, by general laws exempt from taxation . . . all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools and property used exclusively and reasonably necessary in conducting any association engaged in promoting the religious, educational and physical development of boys, girls, young men or young women operating under a State or National organization of like character; also the endowment funds of such institutions of learning and religion not used with a view to profit; and when the same are invested in bonds or mortgages, or in land or other property which has been and shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer, and institutions of purely public charity; . . . "

This Section 2, as adopted in 1876, reads in part as follows:

" . . . the Legislature may, by general laws, exempt from taxation . . . all buildings used exclusively and owned by persons or associations of persons for school purposes, (and the necessary furniture of all schools), and institutions of purely public charity; . . . "

An amendment adopted November 6, 1906, making the pertinent part of Section 2 read as follows:

" . . . the Legislature may, by general laws, exempt from taxation . . . all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools, also the endowment funds of such institutions of learning and religion not used with a view to profit; and when the same are invested in bonds or mortgages, or in land or other property which has been and shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect

such bonds or mortgages; that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer, and institutions of purely public charity; . . ."

The amendment adopted November 6, 1928, added the provision concerning property owned by a church or strictly religious society for use as a dwelling place for the ministry, and the provision beginning with the words "and property used exclusively and reasonably necessary," to and including the words, "operating under a State or National organization of like character." (Emphasis added).

The courts in Texas have uniformly held that the Legislature may exempt real property belonging to and used exclusively by institutions of purely public charity.

In the case of Morris v. Lone Star Chapter No. 6, Royal Arch Masons, 68 Tex. 698, 5 S.W. 518 (1887) the Supreme Court of Texas, in talking about institutions of purely public charity, as used in Section 2 of Article 8 of the Texas Constitution said:

"The grammatical construction of this provision is not clear. The word 'institution' properly means an association organized or established for some specific purpose, . . ."

The court said that that part of the section under consideration which contains the word institution may have been intended to read either:

"'. . . all buildings used exclusively and owned by persons or associations of persons for school purposes, . . . and all institutions (meaning establishments with houses, grounds, etc.) of purely public charity,' or 'all buildings used exclusively and owned by persons or associations of persons for school purposes, . . . and all buildings used exclusively and owned by institutions of purely public charity.'"

The Texas Supreme Court said, ". . . we are of the opinion that the latter reading gives the more reasonable construction of the language as used in the constitution of our State. This gives to the word its proper meaning, and is in accord with the spirit of the other provisions contained in the section."

At the time this opinion was written by the Supreme Court the pertinent part of Section 2 of Article 8 of the Texas Constitution read as follows:

" . . . the Legislature may, by general laws, exempt from taxation; all buildings used exclusively and owned by persons or associations of persons for school purposes, (and the necessary furniture of all schools), and institutions of purely public charity; . . . "

In the case of Barbee vs. City of Dallas, 64 S.W. 1018 (Civ. App. 1901, error ref.) the court stated:

"This appeal involves the construction of Article 8 § 2, of the state constitution, exempting from taxation 'all institutions of purely public charity.' This clause has been considered by the supreme court, and in an able and exhaustive opinion the clause was construed by that court as authorizing the exemption only of real estate, with the buildings thereon owned and used exclusively by institutions of purely public charity. Morris v. Royal Arch Masons, 68 Tex. 698, 5 S.W. 519. In other words, the effect of the holding is that this clause of the constitution authorizes the legislature to exempt only real estate owned and used exclusively by institutions of purely public charity. The property sought to be exempted in the case at bar consists of publications principally of books, tracts, and periodicals published by the Methodist Publishing House at Nashville, Tenn., of which Plaintiff is a branch. The petition does show, however, that Plaintiff 'does carry other of such articles making up the stock in trade of a regular book store.' The property described in the petition consists of personal property only. None of it can be designated as real estate or building. This being true, under the decision above referred to we conclude that it is not included in the exemptions provided for in Article 8, § 2, Const. . . . As the property set out in the petition is not embraced in the clause of the constitution authorizing the exemption of 'all institutions of purely public charity,' it is unnecessary to decide whether the language of the statute (Sayles' Ann. Civ.

St. art. 5065, subd. 6) is broad enough to exempt it, or whether the language of the ordinance of the city exempting property from taxation would include it. It is conceded that, if the constitution does not authorize the exemption of this property, it could not be exempted by the statute or ordinance. . . ."

These cases were decided under the constitution as it was originally written in 1876. The pertinent part of Section 2, as it now reads, is as follows:

" . . . the Legislature may, by general laws, exempt from taxation . . . property used exclusively and reasonably necessary in conducting any association engaged in promoting the religious, educational and physical development of boys, girls, young men or young women operating under a State or National organization of like character; . . . and institutions of purely public charity; . . ."

The cases above discussed were decided in 1877 and 1901, and before Section 2 of Article 8 of the Constitution was amended. We believe that the meaning of section 2 above is entirely different now from that as originally written and in effect at the time the above court opinions were written. These cases are therefore not in point as to the present reading of this section of the constitution.

By the amendments of Section 2 of Article 8 of the Constitution it appears that the people of Texas intended to authorize the Legislature to exempt from taxation, property used exclusively and reasonably necessary in conducting any association engaged in promoting the religious, education and physical development of boys, girls, young men or young women operating under a State or National organization of like character; and property used exclusively and reasonably necessary in conducting institutions of purely public charity. The word "property" not being in any manner qualified, includes personal as well as real property.

The Legislature, in putting into effect the permission granted by Section 2 of Article 8 of the Constitution to exempt property used exclusively and reasonably necessary in conducting institutions of purely public charity went beyond the authority granted, in that the Legislature did not limit the exemption to property used exclusively and reasonably necessary in conducting such institutions. The statute to that extent is void. City of

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San Antonio v. Santa Rosa Infirmary, 249 S.W. 498 (Tex.Civ.App. 1923, reversed on other grounds 259 S.W. 926).


We are, therefore, of the opinion that Acts 1961, 57th Legislature, Chapter 487 which amended Article 7150, Vernon's Civil Statutes, is constitutional insofar as it exempts from taxation, both real and personal, property that is used exclusively and is reasonably necessary in conducting institutions of purely public charity.

S U M M A R Y

Acts 1961, 57th Legislature, Chapter 487, which amended Article 7150, Vernon's Civil Statutes is constitutional, insofar as it exempts from taxation, both real and personal property, that is used exclusively and is reasonably necessary in conducting institutions of purely public charity.

Very truly yours,

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